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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Reorganization and Revision of)
Parts 1, 2, 21, and 94 of)
the Rules to Establish a New)
Part 101 Governing Terrestrial)
Microwave Fixed Radio Services)

WT Docket No. 94-148

DOCKET FILE COPY ORIGINAL

To: The Commission

REPLY COMMENTS OF ASSOCIATION OF AMERICAN RAILROADS

The Association of American Railroads ("AAR"), by its undersigned counsel and pursuant to Section 1.429 of the Commission's Rules, hereby submits these reply comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding, released December 9, 1994 (hereinafter "Notice").

I. BACKGROUND AND PRELIMINARY STATEMENT

AAR addressed several issues in its Comments. It expressed its overall support for the Commission's efforts to clarify and simplify the rules and eliminate redundancies. It pointed out certain inconsistencies in the use of terms and conditions and made suggestions for improvement.

AAR also highlighted the need to preserve the separate and unique identity of the private users. AAR was pleased to see this concern echoed in a number of comments filed in response to the Notice. There was similar support for the proposal that

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private users should be eligible for temporary authorizations in the same manner as common carriers.

AAR recommended that a transition period was necessary to facilitate the changeover from Parts 21 and 94 to Part 101. This suggestion also received widespread support.

Finally, AAR proposed to revise the definition of Multiple Address System because of the difficulty in achieving propagation to four remotes at some points along the railroad right-of-way.

II. THE TIA/NSMA JOINT COMMENTS

AAR representatives participated in the TIA/NSMA working group which developed technical rule proposals for Part 101. AAR supports the majority of the TIA/NSMA proposals and believes they are a significant contribution to the revision process. The consolidation of the common carrier and private user technical standards eliminates unnecessary redundancies. AAR offers the following specific comments.

A. The Construction Period for Private Operational Fixed Users and Common Carriers Should Be Extended From 12 to 18 Months.

This TIA/NSMA proposal received widespread support in the other comments. This extension is crucial because licensees often encounter unanticipated circumstances beyond their control, such as bad weather, which can delay the construction process and, thus, shorten the construction period. This is a particular problem at mountaintop microwave sites in northern latitudes and at high elevations, where heavy snow conditions can prevent

construction progress for several months per year. Another factor in support of extending the construction period is the likely shortage of resources resulting from the influx of PCS applicants and relocated 2 GHz licensees. An extension to 18 months will allow much needed flexibility and ensure well-built facilities.

B. The Frequency Coordination Provisions Can Be Further Improved

The Commission incorporated the frequency coordination procedures of Section 21.100 into its proposed Part 101. AAR believes these procedures will be effective in ensuring efficient and cooperative use of spectrum and minimizing the administrative burden on the Commission. The rules, however, need to be clarified to show that both common carriers and private users are subject to the coordination procedures.

Another necessary revision to the frequency coordination rules is the addition of an interference dispute resolution mechanism to resolve problems in the most expeditious manner possible.^{1/} The mechanism adopted should make clear that resort to the Commission is possible if the parties cannot resolve the dispute between themselves.

Part 101 generally allows the users to police themselves. The Commission, however, left Section 94.15(b)(2) out of proposed Part 101. Under Section 94.15(b)(2) the parties may consent in writing to a relaxation of the interference criteria. This

^{1/} TIA/NSMA Comments at A-53.

option provides necessary flexibility to the coordination system and should be incorporated into the new Part 101.^{2/}

Finally, proposed Section 101.103(d)(2)(xii) protects interests in growth channels by allowing licensees six months to file for the frequency or lose it to another applicant or licensee. This language does not encourage the most efficient use of spectrum. Many of the railroads' communications networks operate in extremely congested areas and, therefore, the tendency to warehouse frequencies is of direct and immediate concern. For these reasons, AAR supports the alternative language proposed by TIA/NSMA which would eliminate the six month time period to either file for or release a frequency.^{3/} The revised section would require release of the frequency upon a showing of need. This "use it or lose it" approach would maximize efficient use of spectrum and would allocate the spectrum to those most in need of it.

C. Channel Loading Standards Should Be as Flexible and Unrestricted as Possible

The proposed channel loading standards are excessive. As the American Petroleum Institute ("API") pointed out, in a normal Private Operational Fixed Service ("POFS") system loading will vary from hop to hop and over time.^{4/} A flexible approach to payload capacity, therefore, simply reflects the practical

^{2/} Id. at A-52.

^{3/} Id. at A-48.

^{4/} American Petroleum Institute ("API") Comments at 14.

realities of the existing systems. The need to maintain equipment consistency for cost and reliability purposes provides additional rationale for flexible standards.

D. The Definition of Private Operational Fixed Service Must Be Maintained

In its comments, AAR underscored the need to maintain the definition of Private Operational Fixed Station contained in Section 94.3. This definition presents a clearer articulation of the concept of "private" than the definition in the TIA/NSMA comments. AAR strongly endorses TIA/NSMA's general position that the Commission must preserve the distinction between private users and common carriers but believes that the better definition is the one presently in Part 94.

E. Filing Certification of Completion

TIA/NSMA recommended expanding the application of Section 101.63 to require both common carriers and private users to file a certification of completion of construction.^{5/} Such certification does not require Commission action. AAR supports the alternative proposals of SBC Communications, Inc. ("SBC") that either the requirement be eliminated or that the Commission be required to acknowledge receipt of the certification through the Public Notice provisions of Section 101.37.^{6/}

^{5/} TIA/NSMA Comments at A-39.

^{6/} SBC Communications, Inc. ("SBC") Comments at 9.

F. A Transition Period is Necessary

AAR supports the TIA/NSMA proposed transition period. The rules should make it clear, however, that the grandfathered licensees are afforded co-primary status with all subsequent systems authorized pursuant to Part 101.^{7/} The transition rules must also address any alteration or clarification concerning license expiration dates. GTE Service Corporation ("GTE") urged the Commission to investigate alternatives to a renewal policy based on randomly scattered license expiration dates. It suggested as one possibility a single anniversary expiration date.^{8/} AAR wishes to ensure that whichever plan is adopted, the transition procedures guarantee that fees already paid for licenses are not lost.

III. VARIOUS PROPOSALS**A. The Commission Should Institute a Blanket Special Temporary Authorization ("BSTA") for Private Users**

AAR supports the recommendation expressed in many comments to codify BSTA authority in Part 101. Since 1993 the Commission has allowed common carriers to operate under Blanket STA's. There is no rationale for distinguishing between common carriers and private users in offering this option. The BSTA has been used to allow a licensee to begin construction and operation of its microwave facilities once the underlying application appears

^{7/} API Comments at 13.

^{8/} GTE Comments at 10.

on public notice as accepted for filing. This eliminates the need to file a separate STA request. In light of the convergence of other operating rules and policies for common carriers and private users, language should be added to Part 101 extending BSTA authority to private users under the same conditions as for common carriers. The section should specify that the grant of such authority is dependent on compliance with the frequency coordination requirements and on the condition that operation will not cause interference. Codification of this authority will facilitate system expansion.^{9/}

**B. The Commission's Emerging Technology
Relocation Rules**

SBC addressed the subject of the relocation rules in its comments.^{10/} These rules have already been the subject of extensive proceedings.^{11/} This current proceeding, therefore, is not the proper forum to deal with such issues. The appropriate procedural course for SBC would be to file a Petition for Clarification of this issue.

^{9/} SBC Comments at 6.

^{10/} Id. at 7.

^{11/} See, Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, First Report and Order and Third Notice of Proposed Rule Making, 7 FCC Rcd 6886, 6890 (1992), Second Report and Order, 8 FCC Rcd 6495 (1993); Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589 (1993).

IV. CONCLUSION

AAR supports the Commission's efforts to streamline and simplify its rules. The creation of a new Part 101 is an important step forward. One of AAR's primary concerns is that the Commission maintain the separate identity of the private users. In the discussion above, AAR has outlined the other changes to Part 101 it believes to be necessary and AAR urges the Commission to incorporate its suggestions into the new Part 101.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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